Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	IB Docket No. 98-148
	)	
1998 Biennial Review --	)	
Reform of the International Settlements	)	
Policy and Associated Filing Requirements	)	
	)	
Regulation of International Accounting	)	CC Docket No. 90-337
Rates	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation (Sprint) hereby respectfully submits its comments on the Commission's *Notice of Proposed Rule Making* in the above-captioned docket.

I. INTRODUCTION AND SUMMARY

Sprint strongly supports the Commission's continued efforts to deregulate further the U.S. international telecommunications market. Many of the Commission's proposed modifications are well tailored to the current state of competition in the provision of U.S.-international services. For example, Sprint shares the Commission's view that the International Settlements Policy (ISP) should no longer apply to arrangements with non-dominant foreign carriers from WTO-member states. Sprint further supports extending this policy to arrangements with non-dominant carriers (whether or not they operate in WTO countries) that cover less than 25 percent of the inbound or outbound traffic on a route.

In addition, Sprint agrees with the Commission that arrangements with dominant foreign carriers could be exempted from the ISP requirements, but only under more limited circumstances than those contemplated by the NPRM. Sprint urges the Commission to distinguish first between arrangements with dominant carriers that cover more than 25 percent of the inbound or outbound traffic on a route, and those that cover less than that amount. For

arrangements covering more than 25 percent, the ISP should apply unless: (1) the foreign market permits U.S. carriers to provide ISR; (2) the settlement rate on the route is at or below the "best practices" rate of $0.08; and (3) the U.S. carrier publicly files the agreement with the Commission and interested parties are given an opportunity to comment. For arrangements involving less than 25 percent of the inbound or outbound traffic on a particular route, the ISP should no longer continue to apply. In adopting a 25 percent threshold, the Commission would maintain its ability to prevent and detect anticompetitive conduct in the U.S. market while at the same time allowing U.S. carriers to obtain more competitive termination arrangements.

Where the ISP remains in place, Sprint recommends that the Commission maintain its current flexibility policy. Additionally, Sprint agrees with the Commission that it should maintain the flexibility safeguard for arrangements affecting more than 25 percent of the inbound or outbound traffic on a route.

At this time, Sprint opposes wholesale changes to the current ISR rules or the "No special concessions" rule. The former should remain in place in order to safeguard against the possibility of one-way bypass and to maintain pressure on above-cost settlement rates. The latter is needed in order to protect U.S. carriers and ratepayers from the discriminatory effects of exclusive arrangements with dominant foreign carriers. Finally, Sprint urges the Commission to continue to allow U.S. carriers to file accounting rate notifications. U.S. carriers and consumers benefit from the notification filing option, which allows simple reductions in accounting rates to take effect on one day's notice. The Commission could reduce confusion between notifications and accounting rate modifications by issuing a public notice explaining the differences between the two procedures.

II. THE ISP SHOULD BE LIFTED UNDER APPROPRIATE CONDITIONS

A. The Commission should not apply the ISP to arrangements with non-dominant foreign carriers.

Sprint fully supports the Commission's proposals to deregulate further international traffic arrangements between U.S. carriers and foreign carriers from WTO member countries. More specifically, Sprint agrees with the Commission's tentative conclusion that it should not apply the International Settlements Policy (ISP) to agreements concluded with non-dominant foreign carriers from WTO member countries. In addition, the Commission should not apply the ISP to arrangements with non-dominant foreign carriers (regardless of whether the home country of the foreign carrier is a member of the WTO) that cover less than 25 percent of the inbound or outbound traffic on a route.

When a U.S. carrier negotiates with a competitive, non-dominant foreign carrier, the U.S. carrier does not need the ISP in order to be protected from being "whipsawed." As the Commission points out, a "whipsaw" occurs when a foreign monopolist is able to play off competitive U.S. carriers against each other in order to obtain high settlement rates or other advantages on a particular route. However, when a competitive U.S. carrier negotiates with a non-dominant foreign carrier, the foreign carrier lacks the market power needed to effectuate a whipsaw. In the event that a U.S. carrier does not like the arrangement that the foreign carrier proposes, the U.S. carrier would have the option of walking away and handing over its traffic to one or more other foreign carriers operating on the route. Under these circumstances, the ISP is no longer needed to protect the interests of U.S. carriers and ratepayers.

Similarly, when an arrangement covers less than 25 percent of the inbound or outbound traffic on a route, the Commission need not impose the ISP in order to safeguard competition in the U.S. international services market. As the Commission has previously acknowledged,

arrangements involving less than 25 percent of the inbound or outbound traffic on a route generally pose less of a threat to competition in the U.S. market.[1] Also, a more deregulatory approach under these circumstances will allow U.S. carriers to obtain more competitive termination arrangements with foreign carriers.

By lifting the ISP to arrangements that cover less than 25 percent of the inbound or outbound traffic on a route, the Commission would preserve its limited enforcement resources to address those arrangements with real potential to harm competition in the U.S. market (*i.e.*, those arrangements that cover a large percentage of traffic on a route). Sprint is generally aware that on international routes, there is widespread cheating and non-compliance with the Commission's rules, including the ISP. There is simply no way that the Commission can effectively police all international arrangements and enforce its rules on a consistent basis. The inevitable sporadic enforcement will place a premium on "adept cheating" rather than competitive ability; disadvantage carriers that obey the Commission's rules; and cause disrespect for the Commission's authority. The Commission would do better to apply its limited enforcement resources to those large arrangements that pose a real threat to U.S. competition, and where enforcement (because of the relative ease of detection of large arrangements) is more certain.

Sprint also supports the Commission's general proposal to relax the filing requirements with respect to contracts and accounting rates between U.S. carriers and non-dominant foreign carriers. As the Commission notes, the filing requirements imposed by Sections 43.51 and 64.0001 were adopted primarily to ensure the enforceability of the ISP. Thus, in those instances where the ISP is eliminated, there is a less compelling need for the public filing requirements.

---

[1] *See Regulation of International Accounting Rates,* CC Docket No. 90-337, Phase II, Fourth Report and Order, 11 FCC Rcd 20,063 at ¶ 46 (1996), *recon. pending* (*Flexibility Order*).

Sprint also agrees, however, that in some instances, the Commission must preserve its ability to police arrangements that cover a large amount of traffic on a route. Thus, while relaxation of the reporting requirements is appropriate, complete elimination of any filing requirement would undermine the Commission's ability to prevent and detect misconduct that would harm competition in the U.S. market.

To balance the competing needs of deregulation with prevention and detection of anticompetitive conduct, Sprint proposes a variation on the filing alternatives proposed by the Commission.[2] First, foreign carriers that have less than 50 percent market share in each of the relevant markets[3] should be presumed to be non-dominant. Second, a U.S. carrier that enters into an operating agreement with a foreign carrier that covers less than 25 percent of the inbound or outbound traffic on a route should not be required to make any filings of service contracts and settlement rate arrangements. However, for arrangements with non-dominant carriers covering more than 25 percent of the inbound or outbound traffic on a route, U.S. carriers should be required to submit a confidential filing with the Commission, identifying the route and the foreign correspondent, and certifying that the foreign correspondent is non-dominant in the relevant markets.

Finally, Sprint believes that these proposed changes should also apply to arrangements with non-dominant foreign carriers from non-WTO member states. The ability to distort competition in the U.S. market does not turn on whether or not the foreign carrier's home country is a member of the WTO. Rather, the volume of traffic involved in an arrangement, and

---

[2] *See* Notice at ¶ 22.

[3] The relevant markets on the foreign end of a U.S. international route generally include: international transport facilities or services, including cable landing station access and backhaul facilities; intercity facilities or services; and local access facilities or services on the foreign end. *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market,* IB Dockets No. 97-142 and 95-22, Report and Order on Reconsideration, 12 FCC Rcd 23891, 23951-52, ¶ 145 (1997), *recon. pending,* (*Foreign Participation Order*).

the Commission's ability to detect and prohibit non-compliance with its rules, determine the potential adverse impact on the U.S. market. WTO membership status has nothing to do with a foreign carrier's ability to discriminate against U.S. carriers.

U.S. ratepayers do not base their calling decisions on whether or not the destination of their call is a member of the WTO. Rather, they make their decisions based on price and quality of service. By eliminating the ISP and modifying the filing requirements for agreements with all foreign carriers, the Commission would: (1) promote the ability of non-dominant foreign carriers to compete; (2) allow U.S. carriers to obtain the most competitive rates and services; (3) help U.S. rate payers obtain better, cheaper and more innovative international services; and (4) concentrate its limited enforcement resources on those arrangements that pose an actual threat to competition in the U.S. market.

B. The ISP should apply to arrangements with dominant foreign carriers covering more than 25 percent of the inbound or outbound traffic on a route unless cost-based settlement rates are in effect and U.S. carriers have equivalent resale opportunities.

The Commission also proposes to lift the ISP requirements for U.S. carrier arrangements with all foreign carriers (including those that are dominant) on routes where the Commission has already authorized the provision of switched services over resold private lines (ISR).[4] Sprint again generally supports the deregulatory thrust of the Commission's proposal but recommends a somewhat more cautious approach for large arrangements as described below.

In determining whether the ISP should apply, Sprint respectfully suggests that the Commission should distinguish between those arrangements involving more than 25 percent of the outbound or inbound traffic on a particular route, and those arrangements involving less than 25 percent of the outbound or inbound traffic. Sprint's 25 percent threshold is based on the

[4] Notice at ¶ 25.

Commission's conclusions in its *Flexibility Order*.[5] There, the Commission stated that the 25 percent threshold would allow carriers to seek more efficient arrangements for terminating international traffic while ensuring that such arrangements "not result in significant disruptions of the U.S. market for international services."[6] If the Commission were to adopt this threshold in deciding whether the ISP should apply to arrangements with dominant foreign carriers, it would again allow U.S. carriers to negotiate better termination agreements while safeguarding competition in the U.S. market.

For those arrangements with dominant foreign carriers involving more than 25 percent of the relevant traffic, the Commission should continue to apply the ISP unless: (1) the foreign market permits U.S. carriers to provide ISR; (2) the settlement rate on the route is at or below the "best practices" rate of $0.08; and (3) the U.S. carrier publicly files the agreement with the Commission and interested parties are given an opportunity to comment. For arrangements involving less than 25 percent of the inbound or outbound traffic on a particular route, the ISP should no longer apply at all (see Section II.A, *supra*).

The potential discriminatory impact of an international traffic arrangement with a foreign carrier increases dramatically with the volume of traffic involved and the applicable settlement rate. An arrangement covering more than 25 percent of inbound or outbound traffic on a route with above-cost settlement rates[7] would have an immediate and dramatic adverse impact on competition in the U.S. market. This arrangement would allow a U.S. carrier to raise its rivals'

---

[5] *See Flexibility Order.*

[6] *Id.*, at 20082, ¶ 46.

[7] The Commission acknowledged in the *Benchmarks Order* that the applicable benchmark settlement rates remain, in most instances, substantially above the actual costs of terminating international traffic. *See International Settlement Rates,* IB Docket 96-261, Report and Order, 12 FCC Rcd 19806.

costs and perhaps even effectuate a price squeeze. It would be very difficult for the Commission to rectify *post hoc* such an adverse impact. However, where settlement rates approach cost, the risk of harm to competition in the U.S. market is significantly diminished.[8] With cost-based rates, the ability of a particular U.S. carrier to material damage competition is much more limited.

Sprint therefore proposes that for the ISP not to apply to arrangements with dominant foreign carriers involving more than 25 percent of the inbound or outbound traffic on a route, the applicable settlement rate must be at or below $0.08. In order to further protect against any adverse impact that could ensue from such an agreement, the Commission should require that U.S. carriers have the ability to provide ISR on the route in question. In addition, the Commission should require all such agreements to be publicly filed and interested parties should be afforded the opportunity to comment. For the reasons stated in Section II.A, *supra*, arrangements involving less than 25 percent of the inbound or outbound traffic on a route should be exempt from the ISP altogether.

C. The Commission should maintain its current Flexibility Policy where applicable.

The Commission has proposed revisions to its Flexibility Policy that it hopes will "encourage more carriers to negotiate alternative settlement arrangements."[9] Specifically, the Commission proposes to modify the flexibility policy to require only that a carrier file a certification that the arrangement does not trigger the flexibility safeguards (*i.e.*, that it affects

[8] As the actual costs of terminating international traffic continue to decline, continued vigilance is necessary in order to reduce settlement rates to cost.

[9] Notice at ¶ 32.

less than 25 percent of the traffic on the route and is not with an affiliate or joint venture partner) and to identify the destination market.[10]

If the Commission adopts Sprint's proposals to lift the ISP under the conditions described above, the flexibility rules would only apply: (1) to arrangements with foreign carriers that cover more than 25 percent of the inbound or outbound traffic on a route; (2) where settlement rates are above the "best practices" rate; and (3) where U.S. carriers do not have equivalent resale opportunities at the foreign end. Under these circumstances, the Commission should maintain the current policy and reporting requirements. In addition, the Commission should, as it has proposed, maintain the flexibility safeguard for arrangements affecting more than 25 percent of the inbound or outbound traffic on a particular route where the ISP continues to apply.

Should the Commission decide not to lift the ISP for arrangements covering less than 25 percent of the traffic on a route, Sprint urges the Commission to relax the flexibility policy for arrangements with non-dominant carriers from non-WTO countries. In this way, the Commission could move closer to its stated goal of encouraging more carriers to negotiate alternative settlement arrangements. It makes no sense for the Commission to apply more stringent rules to arrangements with non-dominant carriers from WTO countries than it does to arrangements with non-dominant carriers from non-WTO countries.[11] In allowing for more flexibility arrangements with non-dominant foreign carriers from non-WTO countries (even those that would not survive scrutiny under the ECO test), the Commission would: (1) promote the ability of non-dominant foreign carriers to compete; (2) allow U.S. carriers to obtain the most competitive rates and services; and (3) help U.S. rate payers obtain better, cheaper and more

[10] Notice at ¶ 35.

[11] *See* Section A., *supra.*

innovative international services. Again, the critical issue that the Commission should consider before it allows a particular arrangement between a U.S. carrier and its foreign correspondent is how the arrangement would affect U.S. competition and U.S. consumers. The relevant factors in such a determination are the amount of traffic covered by the arrangement, the regulatory status of the foreign carrier (dominant or non-dominant) and the applicable settlement rate. Whether the foreign destination country is a WTO member should be irrelevant. The principles of competition do not change based on a country's membership in a multilateral organization.[12]

III. THE COMMISSION SHOULD RETAIN THE CURRENT ISR RULES

The Commission proposes to relax its ISR rules in order to place greater pressure on settlement rates. More specifically, the Commission proposes to allow carriers to provide ISR for a limited amount of traffic on routes where ISR would otherwise not be permitted under the current rules. Alternatively, the Commission proposes to announce in advance that it will lift the ISP requirements at some future point when international markets have become sufficiently competitive overall.[13] Sprint respectfully opposes any modification of the current ISR policy. Relaxation of these rules will not only encourage one-way bypass but will also undermine the Commission's efforts to reform settlement rates.

Under the Commission's first proposal, some form of ISR for an unspecified amount of traffic would be allowed on routes where (1) settlement rates are above the applicable benchmark rate and (2) U.S. carriers do not have equivalent resale opportunities in the foreign market. On these routes, foreign carriers would be able to send a portion of their traffic (or traffic from countries where ISR remains completely prohibited) via ISR, but U.S. carriers would have no

[12] If the Commission adopts Sprint's proposal to lift the ISP for arrangements with non-dominant foreign carriers from non-WTO countries, the flexibility policy as applied to these arrangements would also become irrelevant. Sprint can find no compelling reason for the Commission to impose different regulatory treatment on U.S. carrier arrangements with non-dominant foreign carriers based on their WTO membership status.

opportunity to send their traffic to the foreign destination via ISR. Foreign carriers then would be able to reduce the amount of settled traffic they send to the United States, while U.S. carriers would remain obligated to send all of their traffic as IMTS minutes to the foreign carriers. Consequently, U.S. carrier settlement obligations would expand, causing our nation's $ 5 billion settlement deficit to balloon. In addition, U.S. carriers' proportionate return traffic would decline, thereby increasing the unit costs for international traffic on these routes. U.S. ratepayers would then be forced to pay even higher rates for their calls to non-liberalized markets.

The proposed relaxation of the ISR rules is at odds with the articulated goal of the Commission's *Benchmarks Order*. Rather than put pressure on above-cost settlement rates, the Commission's proposal would allow foreign carriers to postpone making any reductions. In fact, by sanctioning one-way bypass, the Commission would discourage these foreign carriers from reducing settlement rates.

Sprint recognizes that enforcement of the current ISR policy is a real problem. Due to the amount of traffic that is illegally leaking off of the settlements system, the Commission cannot be expected to detect and punish all cheaters. In light of this reality, the Commission should direct its enforcement powers to those illegal arrangements that have the greatest potential to harm competition in the U.S. market, *i.e.*, arrangements that cover a substantial amount of traffic.

Sprint also opposes the Commission's alternative approach of announcing now that it will lift the ISP at some future point when international markets are "sufficiently competitive overall." A blanket elimination of the ISP would not be appropriate where 50 percent (or even more) of international routes have been approved for ISR. Such a policy would be disastrous if it

---

[13] Notice at ¶ 38.

were in place when a few important routes remained closed. The cost of lifting the ISP (in terms of U.S. settlement payments) would then far outweigh any possible savings to U.S. carriers on competitive routes. Sprint urges the Commission to maintain the current ISR rules and abstain from making any premature announcements that would harm U.S. carriers' and ratepayers' interests on non-competitive routes.

IV. THE COMMISSION SHOULD RETAIN THE CURRENT "NO SPECIAL CONCESSIONS" RULE

Sprint believes that for the time being at least, the Commission should retain its "No special concessions" rule as it currently applies to U.S. carrier arrangements with dominant foreign carriers. Even on liberalized routes, dominant foreign carriers may maintain some ability to discriminate in favor of one U.S. carrier over all others through the granting of a special concession. For example, were a dominant foreign carrier to grant a particular U.S. carrier with more favorable rates for the interconnection of international private line facilities, it would negatively affect competition in the U.S. market. Such an arrangement would allow a U.S. carrier to raise its rivals' costs of providing service and would lead to less competition and higher rates for U.S. consumers.

Where the Commission lifts the ISP, U.S. carrier traffic arrangements that would otherwise violate the ISP cannot be deemed to violate the "No special concessions" rule. In other words, it would not make sense to lift the ISP and then deem that a traffic arrangement is a special concession because it violates the ISP. Sprint urges the Commission to make this clarification.

V. U.S. CARRIERS SHOULD CONTINUE TO BE ALLOWED TO FILE ACCOUNTING RATE NOTIFICATIONS.

Sprint opposes the Commission's tentative conclusion that it should remove the option of filing a notification for the simple reduction of accounting rates. Under the current rules, U.S. carriers, including Sprint, have filed notifications allowing lower accounting rates to go into effect on one day's notice. As the Commission originally recognized, this procedure reduces regulatory impediments to lowering accounting rates. While Sprint appreciates that some carriers may be "confused" over the distinctions between notifications and accounting rate modifications, confusion alone is not sufficient grounds for eliminating a streamlined procedural mechanism. Instead, the Commission could clear up any confusion through the issuance of a Public Notice (and posting it on the International Bureau's website) that explains when a carrier can file a notification and when it must file an accounting rate modification. The rules at issue are fairly straightforward and there is nothing so confusing in them as to justify the elimination of the less burdensome rule. For these reasons, Sprint urges the Commission to retain both procedures for the filing of accounting rate changes.

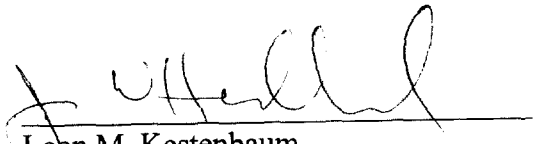
VI. CONCLUSION

In conclusion, Sprint supports many of the Commission's proposed modifications of the ISP and the related filing requirements. The international market is sufficiently competitive to enable the Commission to take many of its proposed deregulatory steps. However, Sprint urges the Commission to modify its proposals with respect to arrangements with foreign carriers that cover more than 25 percent of the inbound or outbound traffic on a route and to maintain the current ISR and the "No special concessions" rules. Finally, Sprint requests the Commission to

retain the accounting rate notification procedure and allow U.S. carriers to implement accounting rate reductions on one day's notice.

Respectfully submitted,

SPRINT CORPORATION

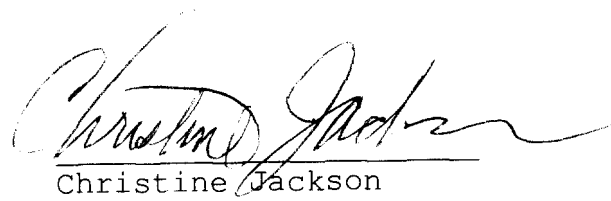


Leon M. Kestenbaum
James W. Hedlund
1850 M Street, N.W.
Washington, DC 20036
(202) 828-7413

September 16, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached **Comments of Sprint Corporation** was delivered by hand or by United States first-class mail, postage parpaid, on this the 16th day of September, 1998 to the below-listed parties:



Christine Jackson

September 16, 1998

Chairman Kennard
Room 814
1919 M St., N.W.
Washington, D.C. 20554

Commissioner Susan Ness
Room 832
1919 M St., N.W.
Washington, D.C. 20554

Commissioner Furchtgott-Roth
Room 802
1919 M St., N.W.
Washington, D.C. 20554

Commissioner Powell
Room 844
1919 M St., N.W.
Washington, D.C. 20554

Commissioner Tristani
Room 826
1919 M St., N.W.
Washington, D.C. 20554

Diane Cornell
8th Floor
2000 M St., N.W.
Washington, D.C. 20554

Troy Tanner
8th Floor
2000 M St., N.W.
Washington, D.C. 20554

Susan O"Connell
8th Floor
2000 M St., N.W.
Washington, D.C. 20554

Gina Keeney
8th Floor
2000 M St., N.W.
Washington, D.C. 20554

Mindy Ginsburg
8th Floor
2000 M St., N.W.
Washington, D.C. 20554

George Li
8th Floor
2000 M St., N.W.
Washington, D.C. 20554